



## TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Office of General Counsel (MS-15)

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# memo

To: Workers' Compensation System Participants

From: Emily McCoy, Associate General Counsel, Office of General Counsel

Date: December 30, 2016

RE: Adopted: Repeal and Re-enact 28 Texas Administrative Code (TAC) §152.3, *Approval or Denial of Fee by the Division*, and §152.4, *Guidelines for Legal Services Provided to Claimants and Carriers*. New §152.6, *Attorney Withdrawal*.

On December 9, 2016, Commissioner of Workers' Compensation Ryan Brannan adopted the repeal of existing 28 Texas Administrative Code (TAC) §152.3 and §152.4. Commissioner Brannan also adopted new §152.3, §152.4, and §152.6. The adoption was filed with the Office of the Secretary of State on December 16, 2016. The adoption will be published in the December 30, 2016 issue of the *Texas Register* and may be viewed on the Secretary of State website at <http://www.sos.state.tx.us/texreg/index.shtml>. A courtesy copy of the adoption is available on the Texas Department of Insurance (TDI) website at <http://www.tdi.texas.gov/wc/rules/2016rules.html>.

The repeal and re-enactment of §152.3, *Approval or Denial of a Fee by the Division*, and §152.4, *Guidelines for Legal Services Provided to Claimants and Carriers*, is necessary to update the attorney fee rules for the first time since 1991. The new rules reflect changes in the industry since §152.3 and §152.4 were originally adopted, and are designed to ensure there is quality representation available within the workers' compensation system. Additionally, they allow more time at the beginning of a dispute for preparation and case management in order to encourage early resolution of claim disputes. New §152.6, *Attorney Withdrawal*, requires attorneys to comply with the Texas Disciplinary Rules of Professional Conduct when withdrawing from a claim and to obtain an order granting the attorney's withdrawal prior to withdrawing after notice of a benefit review conference or contested case hearing is received. These requirements will help prevent an attorney's withdrawal from having a material adverse effect on the client and will assist the division in tracking representation within the workers' compensation system.

**New §152.3, §152.4, and §152.6 have a delayed effective date of January 30, 2017. Attorney and legal assistant services rendered prior to January 30, 2017 must be billed in accordance with the rules in effect on the date the services were provided. Due to system processing requirements, an application for attorney fees may not contain dates of legal services that span across the effective date. Therefore, one application must be submitted for services rendered on or after January 30, 2017, and a separate application must be submitted for services provided prior to and including January 29, 2017. Please also note that the Web-Enabled Attorney Fee Processing System (WAFPS) will be unavailable January 28 – 29, 2017, so that the system can be updated to reflect the new requirements of adopted §152.3 and §152.4.**

The Texas Department of Insurance, Division of Workers Compensation (TDI-DWC) is posting the finalized DWC Form-150, *Notice of Representation*; DWC Form-150a, *Notice of Withdrawal of Representation*; DWC Form-151, *Attorney Application for Web Access*; and DWC Form-152, *Application for Attorney Fees*, simultaneously with these rules. Additional information and the forms are available on the TDI website at <http://tdi.texas.gov/wc/forms/documents/afeeforms1216.pdf>.

